

**U.S. Senate Committee on Indian Affairs
Oversight Field Hearing - August 17, 2011**

**STRENGTHENING SELF-SUFFICIENCY:
OVERCOMING BARRIERS TO ECONOMIC DEVELOPMENT
IN NATIVE COMMUNITIES**

**Testimony of
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**Testimony of
Robin Puanani Danner
President & CEO, Council for Native Hawaiian Advancement**

Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs,

My name is Robin Puanani Danner. I am the President and Chief Executive Officer of the Council for Native Hawaiian Advancement (CNHA), founded in 2001 to enhance the cultural, economic and community development of Native Hawaiians. CNHA, with a membership of over 150 Native Hawaiian Organizations, dedicated to addressing the challenges in our communities from education to business, affordable housing to cultural preservation, is a statewide advocate most comparable to the National Congress of American Indians (NCAI), and the Alaska Federation of Natives (AFN).

I am native Hawaiian, born on the island of Kauai, raised in the fishing village of Niumalu, the Indian reservations of the Apache, Navajo and Hopi, and spent many years among the Alaska Native peoples. For the last 13 years, I have lived on my Native homestead issued under the Hawaiian Homes Commission Act, with my children and husband. My background includes former positions in finance as a bank executive, a Tribal Housing Authority executive director, and county housing director serving Native populations. Currently, I am the chair of the board of the Homestead Community Development Corporation that in addition to my position with CNHA, is highly relevant to the field hearing topic of *Overcoming Barriers to Economic Development in Native Communities*.

Field Hearing

First and foremost, mahalo for holding an oversight field hearing in our homeland of Hawaii, the 50th state of the United States. It is a constant challenge to ensure that decision makers, policy makers and federal officials come to Hawaii, to see firsthand, to walk the issues as we do every day, just as these officials do in other states of the union. Many who are uninformed, assume incorrectly, that Hawaii is a “junket” and a paradise without needs. We have an epidemic of homelessness, fast rising in the ranking of states with the most foreclosures, and as an island state, we are almost entirely dependent on imports of fossil fuel and food.

The significance of the committee, embracing the reality that data feeds good policy, that there is no substitute to raising awareness and seeing first hand, and that no matter the distance or the logistical difficulty, Hawaii is as important as Montana or Wyoming, or Nebraska or Arizona or South Dakota. Our children, our elders, and the solutions that are possible to work on with the Committee are as important as any other. This field hearing is a powerful re-enforcement of the Committee’s jurisdiction on our issues, and that we are not invisible to our federal government.

Native Hawaiians and the Federal Trust Relationship

As the Committee knows, Native Hawaiians are among the families of Native peoples of the United States, and although not as well known, are included in the federal Indian policy and trust relationship. In 1920, the U.S. Congress enacted the Hawaiian Homes Commission Act (HHCA), establishing a federal land trust that nearly mirrors the content of the 1906 Indian Allotment Act. In 1959, the U.S. Congress enacted the Hawaii Admissions Act, which includes language to further recognize the trust relationship with Native Hawaiians. Over the last 90 years, the U.S. Congress has enacted over 150 statutes recognizing my people as Native, like American Indians and Alaska Natives, using the plenary power authorized under the U.S. Constitution to address a myriad of issues.

Similar to the Office of Insular Affairs for the territorial peoples of the U.S. and the Bureau of Indian Affairs for American Indians and Alaska Natives in the Department of the Interior, Congress created the Office of Native Hawaiian Relations to continue the process of reconciliation in accordance with P.L. 103-150, the Apology Resolution, and to oversee the trust responsibilities of the United States to Native Hawaiians, with a particular emphasis on the HHCA and the 1995 Hawaiian Home Land Recovery Act.

Native Hawaiians and the State Trust Relationship

One of the conditions of statehood enacted by the United States was a compact between the federal and state governments, to administer the HHCA referenced above through the establishment in 1961 of the state of Hawaii Department of Hawaiian Home Lands (DHHL). The Hawaii state constitution incorporates and embraces the United States' trust relationship to Native Hawaiians, which was further strengthened by the 1978 Constitutional Convention which established a second state agency, the Office of Hawaiian Affairs (OHA). Each of these state agencies are public trusts of the people of Hawaii, not representing Native Hawaiians, but rather representing all of the people of our state to deliver on the trust mandates established under federal law and state law. There are similar "Offices of Indian Affairs" in other state governments, including Utah and Arizona.

In 2011, the state of Hawaii enacted Act 195, to recognize a Native Hawaiian government, as have been done more than 60 times in other states of the union. In 2011, this honorable committee, the Senate Committee on Indian Affairs, voted to approve the Native Hawaiian Government Reorganization Act, to similarly recognize the self-governance of Native Hawaiians, creating parity with the more than 560 Native governments in approximately 35 states of the country.

In summary, the relationship of Native Hawaiians to state and federal governments, is very similar and mirrors the policies and agencies of our counterpart Native peoples in the other 49 states. The Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA), are Hawaii state agencies with trust responsibilities to Native Hawaiians. Similarly, the United States government has acknowledged its federal trust responsibility to Native Hawaiians and administers it through agencies such as the Departments of the Interior, Health and Human Services, and Housing and Urban Development.

Native Hawaiians and Their Trust Land Representative Organizations

Similar to Indian Country and the organization of Native governments around trust land areas, eligible Native Hawaiians have long held and established governing organizations organized around the trust lands established under the HHCA. These organizations are commonly referred to as homestead associations, or homestead beneficiary organizations. Over 30 such homestead associations exist across the state, tied directly to homestead trust lands of the HHCA. Each has enrolled homestead members and residents, and each democratically elects its leadership.

In many ways, these homestead associations mirror the mission and representation that pueblos, tribes, or villages do in other areas where federally created trust land areas exist. Participation is voluntary in nature by eligible members, and the actions of these homestead associations are governed by the participating eligible members.

There exist many other significant types of Hawaiian organizations, including social justice private nonprofits, member nonprofits like CNHA or the civic clubs and Royal Hawaiian Societies. These organizations are similar to the service focused, cultural and advocacy organizations of many Native organizations around the country. The homestead associations are significant in the context of the

hearing topic of *Overcoming Barriers to Economic Development in Native Communities*, as the solutions discussed require an understanding of the distinction between Native Hawaiian communities that are on trust lands similar to Indian reservations and Native Allotments which are unique and distinct from Native Hawaiian communities that are not on trust lands.

Overcoming Barriers to Economic Development

Our testimony is organized into two distinct areas of discussion and recommendations – General Economic Development and Trust Land Economic Development.

I. General Economic Development. This discussion content focuses on information and recommendations relevant to advancing Economic Development regardless of geographic location. Although Native Hawaiians represent roughly 23% of the population in the state of Hawaii, we represent fewer than 9% of the total small business firms. The two top barriers to economic development we will focus on are business development and access to capital.

A. Business Growth: The SBA 8(a) Program

The SBA 8(a) Business Development program was born in the 1960's to address the economic disparity of minority populations, including veterans, women, and racial minorities. The program sought to connect under-represented Americans in the commerce of the country – doing business with and serving one of the best customers on the planet, the federal government. A brilliant and successful program that not only increased the number of vendors available to our government, but it also created opportunities to establish and grow healthy American-owned, American-run companies that added to the nation's economic growth and health.

In the decades that followed, the Congress recognized the success of the SBA 8(a) program for individual American-owned firms, and connected it to the federal trust responsibility to its Native peoples by amending the program to include Native community owned enterprises for Tribal governments, congressionally mandated Alaska Native Corporations and Native Hawaiian nonprofits. With a historical view of over 200 years of Indian policy to address the impact of building a great nation with the lands of Native peoples, it is absolutely clear that the amendments to the SBA 8(a) program to include Native 8(a) firms is one of the single most successful policies to be made.

Native 8(a) firms are not owned by individuals like their counterpart Minority firms, but rather by organizations that are accountable to millions of Native members and not to private investors. These organizations exist to lift up entire Native populations, to invest any and all resources available to this mission, whether an American Indian Tribe, an Alaska Native Corporation or a Native Hawaiian Organization. Every business success under the Minority 8(a) is one more individual with economic hope and the chance for prosperity. Every business success under the Native 8(a) brings economic hope to millions, and provides a tool that is so well suited under the federal trust policy – the tool of commerce with our own federal government, to advance and lift up our communities for which the government has a solemn trust responsibility.

Moreover, every Native 8(a) is an American company. We don't move overseas when the economy gets difficult. We are American firms, with roots deeper than the country itself. We are engines for economic recovery for our communities, for the counties and the states where we are located, and we hire our fellow Americans. There is no question that the Congress was

exactly right, to amend the SBA 8(a) Business Development program that has and continues to be a successful program for individually-owned American firms, to extend it to be a successful program for community-owned Native firms with a unique federal relationship as long as the country is old.

SBA 8(a) Recommendations

As the most successful program to advance the economic self determination under the federal trust policy, the Native 8(a) program should be expanded and strengthened! There are six areas of recommendation presented:

- 1. No Funding Required: Establish Federal Contracting Goals for Native 8(a) Firms.** Minority 8(a) firm categories have established contracting goals. We recommend that the Congress establish minimum contracting goals for Native 8(a) firms separate and in addition to the existing goals for Minority firms.
- 2. Minimal Funding Required: Adequately Fund SBA Oversight, Training and Technical Assistance.** Native 8(a) firms are unique given their unique ownership, and unique business mission. We recommend that the Congress appropriate \$10 million a year to the SBA dedicated to oversight of the entire SBA 8(a) program, including Native 8(a) firms, and to implement consistent and qualitative training, technical assistance and compliance monitoring for Native 8(a) firms and federal government contracting officers.
- 3. No Funding Required: Reaffirm the Federal Trust Relationship.** Native 8(a) firms are defined as firms owned by a very specific group of Native organizations, specifically, tribal governments, Alaska Native corporations mandated by Congress and Native Hawaiian controlled nonprofits with a social mission. We recommend that Congress enact legislation to reaffirm the participation of these organizations in the 8(a) program as part and parcel of the federal trust responsibility to advance economic self determination.
- 4. No Funding Required: Remove Barriers to Facilitate Growth of Native 8(a) Firms.** As Native organizations that are uniquely dedicated to and mandated to exist to address the social and economic well-being of Native peoples over any dedication to investors or individual wealth, these organizations should be exempted from graduating out of the SBA 8(a) program, should be exempted from size standards or economic disadvantaged criteria applied to individuals, and should have an SBA 8(a) application form that is relevant to these organizations, so long as the federal trust responsibility exists.
- 5. Minimal Funding Required: Build Capacity of Native 8(a) Firms.** Establish and fund a mentor protégé program to encourage mature Native 8(a) firms to mentor emerging Native 8(a) firms. There are no better mentors than those that understand the mentee's history, challenges, structural composition and business goals to advance community solutions. We are seeing some success by pockets of Native organizations around the country. Leveraging this success to share it along with best practices is a powerful tool of capacity building.
- 6. No Funding Required: Congressional Oversight and Reporting.** Native organizations are unique and have a very different business goal and model. They are very much an important stakeholder in achieving the purposes of the federal trust policy. As such, the participation and progress of these organizations in the SBA 8(a) program should be monitored by the Congress. We recommend that every 5 years, the SBA Office of Native

American Affairs produce a Congressional Report to measure the progress, success and impact of these organizations in the business of government contracting.

B. Access to Capital: The Native CDFI Assistance Program

In the 90's, the U.S. Treasury Department established one of the most successful "access to capital" programs in the country, serving under-served and rural populations and communities in every state, the Community Development Financial Institutions Fund (CDFI Fund). Essentially, the CDFI Fund creates opportunities for capital to flow to communities through nonprofit loan funds certified by Treasury, and receives seed funding that attracts private capital. The program has facilitated access to billions of dollars of capital to areas unable to be served by conventional financial institutions. In 1999 and 2000, the Treasury Department engaged in analysis and consultation with Native leaders to ascertain why there was low participation by Native communities in the CDFI Fund and to bring this successful program to bear.

Sol Kahoohalahala, Blossom Feiteira, myself and many others participated in roundtable discussions with Tribal leaders from Alaska and around the country. The result of the national dialogue established the Native American CDFI Assistance program (NACA), part and parcel of the larger CDFI Fund for the country. Having a subset product on Native areas, has proven to be an outstanding strategy, and resulted in 60 Native CDFIs being certified across the country, now deploying capital on the ground in their communities. It is a great beginning, and will result in a highly effective tool to overcoming the access to capital barrier that has prevailed for centuries in our Native areas.

Native CDFI Recommendations

There are two areas of recommendation presented:

- 1. No Funding Required: NACA Permanence.** Make Permanent the subset NACA program with established formula based funding.
- 2. No Funding Required: Matching Funds.** Allow funding from other federal agencies to be eligible as matching funds to the NACA program, to increase overall impact in Native communities and trust land areas which will reduce duplicate lending related functions delivered by multiple sources of funding.

II. Trust Land Economic Development. This discussion content focuses on information and recommendations relevant to advancing Economic Development on and in trust land areas. Access to trust lands, access to capital, and stability in the homesteading program rules are the top barriers to economic development for trust land areas and Hawaiians.

A. Access to Land for Economic Development

The trust lands established under the Hawaiian Homes Commission Act of 1920, fourteen years after the 1906 Indian Allotment Act, essentially calls for the issuance of homestead allotments to eligible Native Hawaiians for residential, agricultural and pastoral purposes, otherwise referred to as "homesteading". The HHCA also allows for trust lands to be issued for "non-homesteading" purposes, with specific language and sections established to promote the self determination and self-sufficiency of Native Hawaiians through land instruments for commerce and other purposes.

Over the 90 year history of the administration of the trust by the federal, territorial and state governments, the non-homesteading aspect of land use, has almost entirely been used to benefit state government operating budgets, or businesses and organizations not controlled by Native Hawaiians, even though section 204 and section 207 of the HHCA clearly sets out a priority for Native Hawaiians.

In the limited instances where access to land has been made available for commerce under the HHCA to Native Hawaiians and/or their economic development organizations, extraordinary work and economic impact has resulted. For example, on Hawaii Island, the homestead association, Makuu Farmers Association, was licensed a small parcel of trust lands under section 207 of the HHCA. They run a very successful Farmers Market serving the entire community of vendors and consumers, while utilizing net revenues to self sustain the operation of the marketplace.

On the island of Kauai, yet another homestead association, the Anahola Hawaiian Homes Association, was licensed two parcels of trust lands under section 207 of the HHCA as well. Today, an outdoor marketplace is in full operation with vendors from across Kauai, and consumers from the visitor industry engaging in commerce in this homestead community. The second parcel is under way to be developed as a Cultural Camp & Academy which will be sustained through revenues and occupancy fees year round.

On the island of Oahu, the Nanakuli Homestead Association is working to develop a commercial center to bring business and consumer goods to their homestead community, as well as a cultural center and affordable housing project. Also on the island of Oahu, the Waimanalo Hawaiian Homestead Association has successfully developed a community center, certified kitchen and other self-sustaining projects serving the entire community.

These examples represent hundreds of jobs collectively. These examples are also far too few, but have the potential to be greatly increased, if access to land by Native Hawaiians is implemented as the Congress intended with the enactment of the HHCA in 1920.

Access to Land Recommendations

There are two areas of recommendation on Access to Land presented:

- 1. No Funding Required: Active Federal Oversight on Land Instruments.** Engage an oversight hearing scheduled every 4 years by the SCIA to require the state of Hawaii, DHHL to report to the Congress, on the land disposition of Hawaiian Home Lands to Native Hawaiians and/or organizations controlled by them for homesteading, economic development and commerce.
- 2. Minimal Funding Required: Tribal & Native Land Development Capacity.** Establish a Trust Land Development Capacity pilot program within the Department of Commerce for Tribes and Homestead Associations with trust lands to pursue development projects that promote jobs, economic impact and wealth in the states where trust lands are located. Funded at a pilot level of \$5 million for 5 years each, is an extremely small investment to achieve results that align trust lands with the economic recovery of the country, in education, in energy and business districts.

B. Access to Capital on Trust Lands for Economic Development

The trust land nature of Hawaiian Home Lands is both a blessing and a curse for economic development. It is a blessing for many of the same reasons it is for Indian Country, which is a preserved land base held in trust that cannot be alienated, for our people to nurture Native Hawaiian language and culture, and continue our life ways as the original peoples of the Hawaiian Islands, regardless of homesteading eligibility by any individual Native Hawaiian. However, access to capital is made more difficult due to the trust nature of our lands.

It need not be a curse, with strategic approaches that ensure capital intended for all of America, is also considered for trust land areas like Hawaiian Home Lands, Indian Reservations and Alaska Native villages.

Access to Capital on Trust Land Recommendations

There are two recommendations to systematically improve access to capital on trust lands.

- 1. No Funding Required: Eligibility of Trust Lands for Federal Programs.** Make trust lands in the 35 states where they exist, automatically eligible as investment areas under all federal programs, including U.S. Treasury, USDA, HUD, regardless of census tract income data or rural definitions. This no cost action and policy making by the federal government will advance the incentives and awareness of economic development opportunities by the capital markets in a greater way. Access to capital is the lifeline to any healthy community, and its ability to produce economic impact. The particular areas where this recommendation will increase the flow of capital includes but is not limited to:
 - New Market Tax Credits (Treasury) – wherein private sector, financial institutional dollars are incentivized to be deployed in certain census tracts around the country. Inclusion of trust land areas will broaden the spectrum for these investors to consider projects in trust land areas, whether for energy, business, school facilities or marketplaces.
 - USDA Funding – wherein agricultural, rural business, water/waste water infrastructure and telecommunication programs are incentivized to grow the nation’s agri-business, healthy foods, broadband and development infrastructure in rural defined areas. Inclusion of trust land areas will ensure access for trust land areas, that are woefully underserved, but have tremendous potential for some of the greatest job creation and economic recovery strategies for Native peoples and the local and state economies where they are located.
 - CDFI Bond Guarantee Program (Treasury) – a program enacted by Congress in 2010 to increase capital through bond guarantees to eligible census tracks in the country. Inclusion of trust land areas in the eligible definition, provides yet another platform for the barrier of accessing capital to be addressed. This program is framed to deliver \$100 million dollar blocks of bond guarantees to projects and infrastructure nationwide.
- 2. No Funding Required: Mortgage Product Parity on Hawaiian Home Lands.** One of the primary sources of capital for economic development and small business start up, is home equity. We recommend that the HUD 184a and FHA 247 mortgage loan products developed based on Indian Country’s products, be updated to bring parity to the ability to refinance and invest home equity in business ventures.

C. Stability in Trust Land Rules

Trust land allotments to Native Hawaiians consist of long term leases of land for residential, agricultural and pastoral homesteading. Particularly in the case of farms and ranches, the success of these activities can greatly depend on generations of family farmers and ranchers. Original lessees may designate successors to these allotments, however are limited to certain familial designations, which can be a barrier to the long term investment and success of farming and ranching under the homestead program of the HHCA.

Moreover, the federal government has never promulgated administrative rules under which its delegated authority to the state of Hawaii is to be implemented, resulting in disputes that can be avoided through the federal rule making process. Economic development and business, like anywhere in America, requires certainty in the rules and processes – trust land areas are no different.

Stability in Homesteading Program Rules Recommendations

Federal consultation policies have a proven record of being a best practice in addressing challenges of Native communities. As such, we have two recommendations to engage this successful practice:

- 1. No Funding Required: Consultation by State of Hawaii & DoI.** Under the committee's jurisdiction on Native issues, encourage the state of Hawaii, DHHL, or the federal Department of Interior, to engage in consultation to dialogue with Homestead Associations, to identify priorities for the HHCA which would provide stability for homesteading for generations of families, creating a stable environment for economic investment, economic development and economic self-sufficiency.
- 2. No Funding Required: Implement Federal Rulemaking on HHCA and HHLRA.** Request the federal Secretary of Interior to begin the process of federal rulemaking for the Hawaiian Homes Commission Act, and the Hawaiian Home Land Recovery Act, to adequately provide guidance to the state of Hawaii, on the implementation of these laws.

Conclusion & Summary

In conclusion, eleven of the fourteen recommendations contained in this submission represent action items that have no federal budget impact. Funding is an ever-needed resource however there are huge steps that can be taken to advance economic development in Native communities that require no funding at all. We hope the committee will consider our recommendations for Native Hawaiians, but also for all Native peoples in the country.

In addition, Chairman Akaka and Members of the Committee, we extend our thanks for the committee's work on the Native Hawaiian Government Reorganization Act of 2011. The real root barrier to economic development for any Native peoples, whether on trust lands or anywhere in our homelands, is the ability to take responsibility and control of our assets and resources under the federal policy of self governance.

History is a great teacher. Over the last 2 centuries, the country has struggled to balance the building of a great democracy and the impact on its indigenous peoples. Our federal government tried extermination, wardship, assimilation, termination, and under an evolving policy under the Kennedy and Johnson Administrations, and then with decisiveness under the Nixon Administration, the federal

government firmly embraced the policy of self determination and self governance toward Native peoples.

Study after study, including those completed by Harvard University in the last decade, validates this policy as the most successful. The Congress has the plenary power to enact legislation on behalf of Native peoples. While we have made advances in the areas of housing, healthcare, and education where Congress has taken action - the real game changer for our socio-economic condition, lies in our self-governance and responsibility for our collective assets and resources to advance the solutions that connect us to our homelands.

If the trust relationship has meaning, if we are to honor those that have gone before us, if we are to build upon a difficult past to create the future we can all be proud of, then we must embrace and lift up the solutions that take down the barriers to economic self-determination. CNHA is firmly in support of the passage of the Native Hawaiian Government Reorganization Act.

Mahalo for the opportunity to submit comments to the committee.